

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 14 1998

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,
vs.

KERRY CHAPLIN,

Defendant - Appellant.

No. 97-5075
(D.C. No. 97-CV-78-C)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **PORFILIO, KELLY** and **HENRY** Circuit Judges.**

Mr. Chaplin, an inmate appearing pro se and in forma pauperis, seeks to appeal from the district court's denial of his 28 U.S.C. § 2255 motion to vacate, set aside or correct his sentence. He seeks a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). On appeal, he raises jurisdictional arguments, claims rejected on direct appeal, see United States v. Edwards, 69 F.3d 419 (10th Cir.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

1995), cert. denied, 116 S. Ct. 2497 (1996), and a claim of ineffective assistance of counsel. The jurisdictional arguments are meritless, see, e.g., United States v. Wacker, 72 F.3d 1453, 1475 (10th Cir. 1995), 117 S. Ct. 136 (1996), the claims raised on direct appeal may not be raised in a collateral attack pursuant to a § 2255 motion absent an intervening change in the law, United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994), cert. denied, 516 U.S. 1152 (1996), and the ineffective assistance claim based upon claims rejected on direct appeal necessarily fails due to lack of prejudice. Because Mr. Chaplin has not made a substantial showing of the denial of a federal constitutional right, we DENY his motion for a certificate of appealability and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge